

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Tony L. Hammond; and  
Nanci E. Langley

Complaint of City and County of San Francisco

Docket No. C2011-2

ORDER GRANTING, IN PART,  
POSTAL SERVICE MOTION TO DISMISS COUNT 1

(July 29, 2011)

I. INTRODUCTION

*Summary of Commission disposition of the count 1 claims.* The Postal Service seeks dismissal, in its entirety, of count 1 of a two-count complaint concerning mail delivery to residents of single-room occupancy buildings (SROs) in San Francisco.<sup>1</sup> San Francisco opposes the Motion.<sup>2</sup>

The Commission dismisses count 1 in part, striking all claims that a manager's interpretation of a delivery regulation and correspondence invoking that interpretation are unlawful or improper because they were not issued pursuant to a rulemaking or other formal action under the Administrative Procedure Act. The remainder of count 1

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<sup>1</sup> Motion of the United States Postal Service for Partial Dismissal of the Complaint, June 7, 2011 (Motion). See *also* Complaint of the City and County of San Francisco, May 18, 2011 (Complaint).

<sup>2</sup> City and County of San Francisco's Answer in Opposition to Motion of the United States Postal Service for Partial Dismissal of the Complaint, June 15, 2011 (Opposition).

survives to the extent that San Francisco argues that the Postal Service's reliance on the Luna Letter<sup>3</sup> is inconsistent with title 39 of the United States Code.

This is a narrow ruling under section 3662. It is based on the unique circumstances presented here, where the heart of the claim is that the regulation the Postal Service contends governs delivery policy to SROs arguably stems from considerations embodied in regulations that are outdated and inappropriate. The Postal Service is well-positioned to address this claim in its Answer, and thereby allow the Commission to make a decision on the merits in terms of whether to accept the remainder of count 1 of the Complaint. Count 2 (which directly alleges undue discrimination in contravention of 39 U.S.C. 403(c)) is not in issue here, as the Postal Service acknowledges that jurisdiction arguably exists and reserves its right to address this count following disposition of this Motion.

*Overview.* In July 2006, San Francisco enacted an ordinance requiring owners of SROs to install, by 2007, mail receptacles for each resident that comply with Postal Service requirements.<sup>4</sup> In December 2008, the Luna Letter addressed certain developments since enactment of the ordinance and announced the Postal Service's position on SRO delivery in San Francisco going forward. The Luna Letter, in pertinent part, acknowledged that after the ordinance was enacted:

- the Postal Service, acting on a local decision, switched from single-point delivery to centralized delivery at some compliant SROs;
- the delivery decision was later discovered during a review spurred by the Postal Service's fiscal shortages; and
- the review found the practice of providing centralized delivery to SROs was inconsistent with Postal Service postal policies.

Complaint, Exh. 1 at 1-2. The Luna Letter further stated that representatives of the Board of Supervisors had been informed, following enactment of the ordinance, that

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<sup>3</sup> Letter to San Francisco Department of Building Inspection from San Francisco Postmaster Luna, December 2008 (Luna Letter).

<sup>4</sup> The ordinance itself is not in issue in this forum.

Postal Service regulations provide for single-point mail delivery to SROs. Complaint at 1. It added: “Postal regulations contained in both the Domestic Mail Manual (DMM) and Postal Operations Manual (POM) provide that single point service is the appropriate mode of delivery for mail addressed to persons in “hotels, schools, and similar places.” *Id.* at 2 (footnote and citations omitted). It noted that “residents in structures eligible for apartment delivery under postal policies are served through individual receptacles assigned to each apartment.” *Id.* at 1-2.

The Luna Letter explained that the Postal Service would continue to provide centralized delivery to SROs where it had been providing that mode of delivery for more than the previous 90 days, but would rescind centralized delivery to SROs where centralized delivery had been extended during the past 90 days.<sup>5</sup> *Id.* Exh. 1 at 2.

*Gravamen of count 1.* The City and County of San Francisco (Complainant or San Francisco) asserts that delivery service to San Francisco residents living in certain SROs is being provided in violation of postal regulations; results in deficiencies, such as lost or stolen mail; and that these deficiencies have exposed the residents of these SROs to significant harms and risks due to lost or stolen mail. *Id.* at 1. Count 1 consists of 10 numbered paragraphs (ranging from 57 through 66); however, paragraph 57 incorporates by reference preceding paragraphs 1 through 56. The incorporated paragraphs address a wide range of matters, such as history of the ordinance; pre- and post-ordinance delivery practices; the requested relief; and assertions that the Commission has jurisdiction over the claims in count 1 under section 3662.

The remaining paragraphs in count 1 primarily address the Complainant’s concern that mail delivery to SROs is largely guided by a postal regulation for “hotels, schools and similar places” (under DMM 508.1.7.2 and POM 615.2), instead of the regulation for delivery to apartment buildings and family hotels (under POM section 631.451). Grouping SROs with hotels or schools typically means that SRO residents

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<sup>5</sup> The Luna Letter did not provide the rationale for the 90-day cutoff, but it is based on POM § 631.7 dealing with correction of improper mode of delivery. This provision states that if the Postal Service discovers an error in the mode of delivery within 90 days, it corrects the mode of delivery; if the error is not discovered within 90 days, the Postal Service does not change the mode of delivery.

receive delivery via single-point delivery, with building management responsible for distributing mail (and handling other tasks, such as forwarding) after a letter carrier drops a mail bag at the door or desk. This contrasts with centralized delivery, where a letter carrier delivers mail directly to secure, individual mailboxes in a multi-unit building. The Complainant contends the basis for the hotel and school delivery policy is the transient status of the occupants, and argues that many SRO residents, in contrast, may be long-term residents, like apartment dwellers, but occupy buildings with shared facilities because of their relatively lower socioeconomic status.

## II. REVIEW OF PLEADINGS

*The Postal Service's position.* The Postal Service's rationale for dismissal of count 1 in its entirety is that the Complainant has not established the requisite nexus between SRO delivery policy and section 401(2). It maintains that to the extent section 401(2) provides an independent basis for jurisdiction, it is not a broad exception to the statutory limitation on the Commission's jurisdiction, and does not permit circumvention of that limitation by allowing challenges to the Postal Service's delivery policies or operational decisions generally. Motion at 2-3. It also asserts that the Complainant's alternative theory, which is that any act of interpreting Postal Service regulations must be authorized by formal amendment of existing regulations, is not supported by any statute or legal principle. *Id.* at 3.

In particular, the Postal Service asserts that the Complainant does not explain how the Postal Service's interpretations violate section 401(2), claiming the only connection alleged between that statutory provision and the challenged Postal Service interpretations is the assertion that the questioned regulations were adopted pursuant to the Postal Service's authority under section 401(2). *Id.* at 8. It claims the Complainant does not allege that the regulations are beyond the scope of that authority, or that they were improperly established. *Id.* Alternatively, the Postal Service asserts that the Complainant alleges that the act of interpreting and applying the regulations, to the

extent that such conduct conflicts with the Complainant's own interpretations, could only have been accomplished through formal amendment of the existing regulations. *Id.*

In addition, the Postal Service asserts that it applies the delivery regulation for multi-unit buildings only after it determines whether long-term permanent residency is involved, and that some form of centralized delivery is appropriate. *Id.* at 1-2. It argues that in raising its claim, the Complainant is attacking "decisions made many decades ago, or longer, when delivery to those SRO hotels first commenced." *Id.* at 2.

*Complainant's position.* San Francisco responds by reiterating its claim in the underlying Complaint that the Postal Service has improperly relied on the Luna Letter as a rule or regulation to deny service to residents of SROs in San Francisco, contrary to what it [San Francisco] considers the governing regulation, and that this improper reliance provides jurisdiction under 39 U.S.C. 401(2), independent of the undue discrimination claim under 39 U.S.C. 403(c). Opposition at 3. Alternatively, San Francisco claims the Commission has jurisdiction under section 401(2) because the Luna Letter is not an interpretation of the Postal Service's governing regulations, but is simply an edict that mail delivery to SROs will be treated as falling into the same category as mail delivery to schools or to tourist hotels [under POM 615.2] instead of into the category of apartment houses, residential hotels, and other residential units [under POM 631.45]. It contends the Postal Service

simply groups SROs, along with their economically disadvantaged residents, with schools (under POM 615.2), depriving them of treatment as 'residential units' (whether or not 'apartment houses,' 'family hotels,' or other 'residential units') under POM Section 631.45.

*Id.* at 10.

Additionally, the Complainant claims the Postal Service's misreading of its own regulations (and ensuing failure to follow POM 631.45) is a violation of 39 U.S.C. 401(2).

### III. SECTION 3662 JURISDICTION

Section 3662(a) gives the Commission jurisdiction over complaints involving five statutory provisions and chapter 36 matters (and related regulations). It provides:

Any interested person...who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter [36] (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

### IV. ANALYSIS

The parties' characterizations of count 1 claims are strikingly different. The Postal Service asserts that "[i]n essence, the Complainant challenges the Postal Service's act of interpreting and applying regulations governing the delivery of mail to various types of buildings where occupants stay for one or more nights." Motion at 8; *see also id.* at 11. In contrast, Complainant contends that the Luna Letter "is an edict—it is no mere statement about operations or interpretation of existing rules." Opposition at 10.

The Commission agrees with the Postal Service that the Luna Letter was not required to be authorized through a rulemaking or other formal amendment of existing regulations. The Postal Service has the inherent authority to implement its regulations and, in doing so, is not subject to formal rulemaking procedures. Allegations in the Complaint related to this aspect of count 1 are stricken; therefore, the Postal Service is not required to provide an answer to them.<sup>6</sup>

The Complaint also contains alternative claims under count 1 that are somewhat unclear. Plainly, the claim of undue discrimination in violation of 39 U.S.C. 403(c) is common to both counts 1 and 2. In count 1, however, Complainant appears to contend

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<sup>6</sup> In the Commission's view, the stricken material includes paragraph 57 of count 1 to the extent it incorporates allegations set out in paragraphs 11, 34 and 35 of the Complaint; paragraph 59, second sentence; and paragraph 64. By extension, it also includes paragraph 67 of count 2 to the extent it incorporates paragraphs 11, 34 and 35 of count 1. The Postal Service may address the appropriateness of striking other paragraphs in its Answer.

that reliance on the Luna Letter (independent of its failure to be formally authorized) causes the Postal Service to misclassify SROs in contravention of provisions of title 39, including section 403(c).

Given this different contention, the Commission is not persuaded that, at this stage, dismissal of count 1 in its entirety is appropriate. Accordingly, the Motion is denied in part. The Commission emphasizes that this ruling is limited. It simply requires the Postal Service to answer the surviving count 1 claims. It is not dispositive of their validity.

The Postal Service is directed to answer the surviving count 1 claims together with its answer to count 2. Pursuant to rule 3030.12(b)(1) such answer is due 10 days from the date of this Order.

#### V. ORDERING PARAGRAPHS

*It is ordered:*

The Motion of the United States Postal Service for Partial Dismissal of the Complaint, filed June 7, 2011, is granted, in part, and denied, in part, as set forth in the body of this Order.

By the Commission.

Shoshana M. Grove  
Secretary